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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION SIX

WILLIAM CRAIG SMITH,

Plaintiff and Appellant,

v.

CALIFORNIA COMMISSION ON
TEACHER CREDENTIALING,

Defendant and Respondent.

2d Civil No. B270351
(Super. Ct. No. 1459600)
(Santa Barbara County)

William Craig Smith, appearing in propria persona, appeals the trial court's judgment denying his petition for writ of administrative mandate directing the California Commission on Teacher Credentialing (Commission) to vacate its decision to revoke his teaching credential. The trial court found, based on its independent review of the administrative record, that Smith's unfitness to teach justified revocation of his credential. We conclude that substantial evidence supports the court's findings and that Smith has failed to demonstrate any due process violations. Accordingly, we affirm.

FACTS AND PROCEDURAL BACKGROUND

While training for his teaching credential, Smith served as a substitute teacher for the Santa Maria-Bonita Unified School District (District). The District subsequently banned him from substitute teaching because of unacceptable teaching practices. After Smith obtained his teaching credential, he applied to the District for a permanent position. When he was not hired, Smith lodged a complaint with the Equal Employment Opportunity Commission. Following mediation, Smith accepted a position with the District teaching "opportunity classes"¹ at Arellanes Junior High School (Arellanes).

During the 2005/2006 school year, Smith did not have any "major incidents" at Arellanes. Problems started the following school year, when he began working with the school's new principal, Dr. Patricia Grady. As described by the trial court, "Smith seemed at odds with the [p]rincipal's authority, had difficulties with a student identified as R.L., had a physical confrontation with another student, involved the police, contrary to [Dr. Grady's] instruction, when a math book went missing, and appeared to spend excessive time on his computer." Although these acts did not result in disciplinary action, Smith transferred to El Camino Junior High School (El Camino) at the end of the 2006/2007 academic year.

Between June 6, 2008 and February 20, 2009, Smith was suspended eight times, for a total of 105 days. The bases for his suspensions included trespassing, interrupting a closed-session meeting, insubordination, making threatening

¹ "Opportunity classes" are for students who have not had success in regular classrooms and who are at risk of not completing junior high or high school.

statements and gestures, interfering with police investigations, dishonesty and insubordination, repeated insubordination and dishonesty, attempted extortion, refusing to comply with a directive not to contact the Superintendent, requesting that the District provide false information regarding his pay to a home loan lender, repeatedly making false and defamatory statements to the president of the District's Board, and misuse of the school's laptop computer.

On March 30, 2009, the District placed Smith on paid administrative leave. A few months later, it issued a statement of charges and recommendation of dismissal. Pursuant to a settlement, Smith resigned from his position. The District notified the Commission, which found probable cause to recommend revocation of Smith's teaching credential. Smith requested an administrative hearing under Education Code section 44244.1.

Smith represented himself at the seven-day administrative hearing held before Administrative Law Judge Mark Harman. Judge Harman's 23-page proposed decision sustained the accusations against Smith, and revoked his teaching credential and all other certification documents. Judge Harman found that Smith "has engaged in numerous acts involving dishonesty, improper discipline of students, verbal and emotional abuse of students and colleagues, willful defiance of supervisors' directives, misuse of a District computer and failure to fulfill his duties in the classroom, refusal to make changes in his classroom or to improve his teaching skills, continually bringing charges or threats of charges against his superiors in a manner that was disruptive to the educational process and not geared toward resolving problems, all to the detriment of

students and teachers.” The Commission adopted Judge Harman’s proposed decision. Thereafter, the Commission granted Smith’s request for reconsideration, but did not change its decision. Smith petitioned the trial court for a writ of mandate.

Exercising its independent judgment, the trial court "reviewed the entire record, including all eight volumes of hearing transcripts, the two volumes of administrative records, the supplemental information provided by . . . Smith, and the authorities and argument provided by the parties.” It concluded that "the evidence in this case does support the finding that . . . Smith is temperamentally unsuited to continue teaching in public schools” and "has a pattern of escalating every point of conflict, carrying grudges forward, and perceiving every setback as the result of a widening war against him.” The court further found that “[t]he aggressive attitude [Smith] displayed with senior administrators was displayed as well in the classroom, where he yelled frequently at his students, was unable to find successful ways of motivating them, and engaged in inappropriate and unprofessional forms of discipline.” Smith appeals the judgment denying his petition.

DISCUSSION

Standard of Review

“In reviewing a commission's decision, the superior court ‘shall exercise its independent judgment on the evidence.’ [Citation.] Where a superior court is required to make such an independent judgment upon the record of an administrative proceeding, the scope of review on appeal is limited. An appellate court must sustain the superior court's findings if substantial evidence supports them. [Citations.] In reviewing the evidence,

an appellate court must resolve all conflicts in favor of the party prevailing in the superior court and must give that party the benefit of every reasonable inference in support of the judgment. When more than one inference can be reasonably deduced from the facts, the appellate court cannot substitute its deductions for those of the superior court. [Citation.]” (*Pasadena Unified School Dist. v. Commission on Professional Competence* (1977) 20 Cal.3d 309, 314; see *San Diego Unified School Dist. v. Commission on Professional Competence* (2011) 194 Cal.App.4th 1454, 1461-1462.)

Deficiencies in Smith’s Brief

As the Commission points out, Smith’s “brief is a hodgepodge of irrelevant and incoherent facts, interspersed with general allegations and arguments taken directly from his petition for writ of mandate and other superior court filings.” Although Smith provides a few citations to the clerk’s transcript and the administrative hearing transcripts, he makes no reference to the administrative record. Most of his record citations are to his previously filed pleadings and arguments, not to relevant evidence.

Judgments are presumed correct and it is the appellant's burden to affirmatively demonstrate error. (*Denham v. Superior Court* (1970) 2 Cal.3d 557, 564; *Hernandez v. California Hospital Medical Center* (2000) 78 Cal.App.4th 498, 502.) That Smith is self-represented does not change this burden. (*Dowden v. Superior Court* (1999) 73 Cal.App.4th 126, 129-130; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246-1247.) We are not required to examine undeveloped claims or to make arguments for the parties. (*Paterno v. State of California* (1999) 74 Cal.App.4th 68, 106; *Kim v. Sumitomo Bank* (1993) 17

Cal.App.4th 974, 979 [appellate court not required to consider points not supported by citation to authorities or record].)

While we could affirm the judgment on the basis that Smith has failed to present understandable, persuasive or supported arguments on appeal, we are mindful that important rights are at stake. (See Cal. Rules of Court, rule 8.204(a)(1); *Duarte v. Chino Community Hospital* (1999) 72 Cal.App.4th 849, 856.) We therefore have examined the record for evidentiary and legal support for the judgment.

Due Process Contentions

Smith appears to repeat three due process arguments he made in the trial court, i.e., that the Commission abused its discretion because (1) it failed to review the reporter's transcript of the proceedings before adopting Judge Harman's proposed decision; (2) it did not consider alleged exculpatory evidence provided by Smith's witnesses; and (3) it allowed Judge Harman to admit prior testimony of an unavailable witness. The Commission maintains that the trial court properly considered and rejected each of those arguments. We agree.

First, the trial court correctly concluded that the Commission was not required to review the transcript of the administrative hearing before adopting Judge Harman's proposed decision. In Administrative Procedure Act proceedings (Gov. Code, § 11500 et seq.), such as those conducted here, due process does not require that the agency read or hear the evidence placed before the hearing officer. The agency may rely on the report made by such hearing officer. (*Fichera v. State Personnel Board* (1963) 217 Cal.App.2d 613, 620.) In *Hohreiter v. Garrison* (1947) 81 Cal.App.2d 384, the court determined that Government Code section 11517 "properly interpreted, provides that where the

hearing officer acts alone the agency may adopt his decision without reading or otherwise familiarizing itself with the record.” (*Hohreiter*, at p. 399; accord *Vollstedt v. City of Stockton* (1990) 220 Cal.App.3d 268, 275-276.)

Second, Smith appears to attack Judge Harman’s failure to acknowledge that Smith presented witnesses on his behalf whose testimony purportedly constituted exculpatory evidence. The trial court thoroughly reviewed the testimony of those witnesses and found “that it was of little substance.” It described the testimony of the majority of those witnesses as marginal and unrelated to the specific allegations against Smith. Smith has not demonstrated that its exclusion from Judge Harman’s proposed decision was a due process violation.

Finally, Smith asserts that his due process rights were violated when Judge Harman admitted previously sworn testimony of a former student, who was unavailable to testify at the administrative proceeding. It is well established that evidence of former testimony is not made inadmissible if the declarant is unavailable as a witness and “[the] party to the action or proceeding in which the testimony was given . . . had the right and opportunity to cross-examine the declarant with an interest and motive similar to that which he has at the hearing.” (Evid. Code, § 1291, subd. (a)(2).) Here, the witness testified and was cross-examined by Smith in a prior hearing before an administrative law judge regarding the District’s termination proceedings. Once again, the trial court properly determined there was no violation of Smith’s due process rights.

Substantial Evidence Supports the Judgment

Education Code section 44421 allows the Commission to revoke the credential of a teacher “for immoral or

unprofessional conduct, or for persistent defiance of, and refusal to obey, the laws regulating the duties of persons serving in the public school system, or for any cause that would have warranted the denial of an application for a credential or the renewal thereof, or for evident fitness for service.”

In disciplinary matters affecting a teacher’s credential, there must be a nexus between a teacher’s alleged conduct and his or her fitness to teach. (*Morrison v. State Board of Education* (1969) 1 Cal.3d 214, 229-230.) The Supreme Court suggested factors that may be considered to determine if there is a sufficient nexus. These include “[1] the likelihood that the conduct may have adversely affected students or fellow teachers, [and] the degree of such adversity anticipated, [2] the proximity or remoteness in time of the conduct, [3] the type of teaching certificate held by the party involved, [4] the extenuating or aggravating circumstances, if any, surrounding the conduct, [5] the praiseworthiness or blameworthiness of the motives resulting in the conduct, [6] the likelihood of the recurrence of the questioned conduct, and [7] the extent to which disciplinary action may inflict an adverse impact or chilling effect upon the constitutional rights of the teacher involved or other teachers.” (*Ibid.*, fns. omitted; see *Governing Board of ABC Unified School Dist. v. Haar* (1994) 28 Cal.App.4th 369 [holding that only the pertinent *Morrison* factors need be examined].) The record reflects that Judge Harman and the Commission properly considered the *Morrison* factors in rendering their decisions.

The Commission did not adopt Judge Harman’s proposed decision based on a single incident or even a few incidents of misconduct. As the trial court aptly observed, “[Judge Harman] found that unfitness to teach was demonstrated

by continuing episodes of unprofessional conduct. [Smith] spent excessive time complaining of District policies. He was confrontational and rude to many students, teachers, parents and administrators. He misused his computer for personal business. He displayed a bad temper and yelled at students inappropriately. He refused to comply with administrator's directives. He threatened the District when he did not get what he wanted. He was not honest as to verification of his income. His misconduct in creating a negative atmosphere in the classroom and in dealing with administration was found to be a defect in temperament. [Judge Harman noted,] 'It would be hard to imagine what the District could have done to assist [Smith] or reverse his campaign against the District, other than by acceding to his every demand.'"

We agree with the trial court that "[i]t should not be necessary to comb through every episode of inappropriate or unprofessional conduct to draw the conclusion that the evidence in this case does support the finding that . . . Smith is temperamentally unsuited to continue teaching in public schools." His series of eight suspensions alone support the trial court's findings. By way of example, Smith was suspended for 15 days without pay for disrupting a closed, non-public session of the District's Board. Smith refused to leave, and appeared agitated and aggressive to the point that the Board's president feared for his safety and the safety of other Board members. The police were called, and the president testified that Smith's "intrusion" into the meeting prevented the Board from conducting its business.

On another occasion, Smith applied for financing to purchase a home. He was under suspension at the time.

Because his recent pay stubs did not show his “normal” rate of pay, Smith asked the District to provide his lender with pay stubs reflecting what he would have been paid if he had not been on unpaid leave. Personnel clerk Christine Arebalo explained that the District could not provide pay stubs for pay Smith did not receive. When the lender contacted Arebalo to obtain the pay stubs, the lender stated that Smith had represented that he was on paid medical leave, not suspension leave. Shortly thereafter, Smith sent an email to the District that stated, “Just a reminder that if I loose [sic] my home purchase because of your unwillingness to make concessions and the district is found to be at fault, I will use all legal remedies available? Let me know if you plan on staying your same course.”

The most damaging allegations of misconduct involved reports of negative interactions with students. As the trial court noted, “Reports made by students that [Mr. Smith] spit on their food, were denied by Mr. Smith and have not been established. However, Mr. Smith admitted that he sometimes spit on food he had thrown in the trash in order to prevent the students from retrieving it. . . . Testimony was received from a former student at El Camino, G.C. who said he had no particular problems with Mr. Smith, but remembered him yelling ‘most of the time.’ He recalled Mr. Smith saying that he had worked in a prison and saying he could get you locked up in jail if you didn’t behave in class. ‘A lot of people were blamed for things they didn’t do.’ . . . [The student] reported that he did not enjoy the class and felt like a prisoner He thought Mr. Smith had a bad temper and treated students unfairly. . . . There are multiple other reports of physical and emotional confrontations between Mr. Smith and his students that cannot be regarded as having

genuine evidentiary value, but which play a role as corroborative administrative hearsay.”

In sum, we conclude substantial evidence supports the trial court’s denial of Smith’s petition for writ of mandate. Indeed, the record overwhelmingly supports the Commission’s decision to revoke his teaching credential. We have considered Smith’s arguments to the contrary and find them unpersuasive.

DISPOSITION

The judgment is affirmed. The Commission shall recover its costs on appeal.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J.

YEGAN, J.

Jed Beebe, Judge
Superior Court County of Santa Barbara

William Craig Smith, in pro. per, for Plaintiff and Appellant.

Kamala D. Harris, Attorney General, Ismael Castro, Acting Senior Assistant Attorney General, Richard T. Waldow, Supervising Deputy Attorney General, and Gregory M. Cribbs, Deputy Attorney General, for Defendant and Respondent.